

# TREES AND HIGH HEDGES ACT 2005

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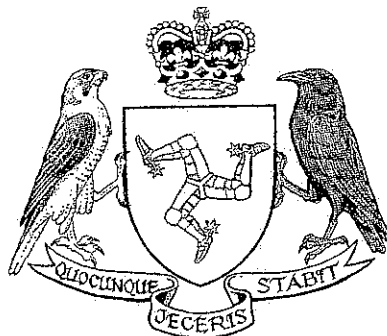
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Isle of Man } Signed in Tynwald: 21st June 2005  
 to His Majesty } Received Royal Assent: 22nd June 2005  
 Announced to Tynwald: 22nd June 2005

## AN ACT

to make provision for dealing with complaints about trees and high hedges; and for connected purposes.

**WE**, your Majesty's most dutiful and loyal subjects, the Council and Keys of the said Isle, do humbly beseech your Majesty that it may be enacted, and be it enacted, by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows (that is to say):—

### *Introductory*

1. (1) This Act applies to a complaint if —
  - (a) it is made for the purposes of this Act by the owner or occupier of any domestic property, and
  - (b) it alleges that his reasonable enjoyment of that property is being adversely affected by a tree or a high hedge on land owned or occupied by another person.
- (2) This Act does not apply to complaints about damage caused by the roots of either a tree or a high hedge.
- (3) In this Act, in relation to a complaint to which it applies —
  - (a) “the complainant” means the person by whom the complaint is made or, if he is no longer the owner or occupier of the domestic property specified in the

Complaints to which this Act applies.

complaint, any other person who is for the time being the owner or occupier of that property;

(b) “the Department” means the Department of Local Government and the Environment; and

(c) “the neighbouring land” means the land on which the tree or high hedge is situated.

(4) Subject to subsection (5), this Act applies to a complaint which —

(a) is made for the purposes of this Act by the owner of any domestic property that is for the time being unoccupied, and

(b) alleges that the reasonable enjoyment of the property by a prospective occupier of it would be adversely affected by the tree or high hedge situated on land owned or occupied by another person,

as it applies to a complaint falling within subsection (1).

(5) In relation to a complaint falling within subsection (4), any reference in section 5 to the effect of a tree or a high hedge on the complainant’s reasonable enjoyment of any domestic property shall be read as a reference to the effect that it would have on the reasonable enjoyment of the property by a prospective occupier.

High hedges.

2. (1) In this Act “high hedge” means so much of a barrier to light as —

(a) is formed wholly or predominantly by a row of 2 or more trees or shrubs; and

(b) rises to a height of more than 2 metres above ground level.

(2) For the purposes of subsection (1) a row of trees or shrubs is not to be regarded as forming a barrier to light if the existence of gaps significantly affects its overall effect as such a barrier at heights of more than 2 metres above ground level.

Domestic property.

3. (1) In this Act “domestic property” means —

(a) a dwelling, or

(b) a garden or yard which is used and enjoyed wholly or mainly in connection with a dwelling.

(2) In subsection (1) “dwelling” means any building or part of a building occupied, or intended to be occupied, as a dwelling.

(3) Any reference in this Act to a person’s reasonable enjoyment of domestic property includes a reference to his reasonable enjoyment of any part of such property.

#### *Complaints procedure*

4. (1) This section has effect where a complaint to which this Act applies —

Procedure  
for dealing  
with complaints.

- (a) is made to the Department; and
- (b) is accompanied by such fee (if any) as the Department may by order prescribe.

(2) If the Department considers —

- (a) that the complainant has not taken all reasonable steps to resolve the matters complained of before proceeding by way of such a complaint to the Department, or
- (b) that the complaint is frivolous or vexatious,

the Department may decide that the complaint should not be proceeded with.

(3) If the Department decides to proceed with the complaint, it must decide —

- (a) whether, in its opinion, the tree or the high hedge specified in the complaint is adversely affecting the complainant’s reasonable enjoyment of the domestic property so specified; and
- (b) if so, what action (if any) should be required to be taken in relation to that tree or hedge, in pursuance of a remedial notice under section 5, with a view to remedying the adverse effect or preventing its recurrence.

(4) The Department must, when acting under subsection (3), take into consideration all matters appearing to be relevant, including in particular (so far as appearing to be relevant) —

- (a) the extent to which the tree or high hedge in question is capable of affording (or, in the case of a high hedge, if reduced in height, would still be capable of affording) privacy to an occupier of the neighbouring land,

(b) in the case of a tree, after consultation with the Department of Agriculture, Fisheries and Forestry, the extent to which that tree contributes to the amenity of the neighbourhood, and

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(c) the provisions of the Tree Preservation Act 1993 (to which this Act is subject) and any other legal obligation relating to that tree or hedge.

(5) If the Department decides under subsection (3) that action should be required to be taken as mentioned in paragraph (b) of that subsection, it must as soon as is reasonably practicable —

(a) issue a remedial notice under section 5 implementing its decision;

(b) send a copy of that notice to the following —

(i) the complainant, and

(ii) every person who is the owner or occupier of the neighbouring land; and

(iii) in the case of a tree, the Department of Agriculture, Fisheries and Forestry; and

(c) notify those mentioned in paragraph (b) of the reasons for their decision.

(6) If the Department —

(a) under subsection (2) decides that the complaint should not be proceeded with, or

(b) under subsection (3) decides either or both of the issues specified in that subsection otherwise than in the complainant's favour,

it must as soon as is reasonably practicable notify the appropriate person or persons of any such decision and of its reasons for it.

(7) For the purposes of subsection (6) —

(a) the complainant is an appropriate person in relation to a decision falling within paragraph (a) or (b) of that subsection; and

(b) every person who is the owner or occupier of the neighbouring land is an appropriate person in relation to a decision falling within paragraph (b) of that subsection.

5. (1) For the purposes of this Act a remedial notice is a Remedial notices. notice —

- (a) issued by the Department in respect of a complaint to which this Act applies, and
- (b) stating the matters mentioned in subsection (2).

(2) Those matters are —

- (a) that a complaint has been made to the Department under this Act about a tree or high hedge specified in the notice which is situated on land so specified;
- (b) that the Department has decided that the tree or the height of that hedge is adversely affecting the complainant's reasonable enjoyment of the domestic property specified in the notice;
- (c) that such action as is specified in the notice must be taken in relation to that tree or hedge, with a view to remedying the adverse effect, before the end of the compliance period;
- (d) (if the Department so decides) that, following the end of that period, such action as is so specified must be taken in relation to that hedge or tree, with a view to preventing a recurrence of an adverse effect, so long as the hedge or tree remains on the land; and
- (e) the consequence under sections 10 and 11 of a failure to comply with the notice.

(3) Unless the subject of a variation under section 6 and, in the case of a tree, the Department of Agriculture, Fisheries and Forestry has notified its approval, the action specified in a remedial notice for the purposes of subsection (2)(c) or (d) may not involve —

- (a) the removal of the tree or hedge, or
- (b) a reduction in the height of the tree or hedge to less than 2 metres above ground level.

(4) A remedial notice shall take effect on its operative date.

(5) "The operative date" of a remedial notice is such date (falling at least 28 days after that on which the notice is issued) as is specified in the notice as the date on which it is to take effect.

(6) “The compliance period” in the case of a remedial notice is such reasonable period as is specified in the notice for the purposes of subsection (2)(c) as the period within which the action so specified is to be taken; and that period shall start to run on the operative date of the notice.

(7) Subsections (4) to (6) have effect in relation to a remedial notice subject to —

- (a) any variation or withdrawal of the notice under section 6, and
- (b) the operation of any provision made by or under section 6(6) or sections 7 to 9 in relation to the notice.

(8) While a remedial notice has effect, the notice —

- (a) shall be a burden on the land pursuant to paragraph 14 of Schedule 5 to the Land Registration Act 1982, and
- (b) shall be binding on any person who is for the time being the owner or occupier of the land to which the notice relates.

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Variation or  
withdrawal of  
remedial  
notices.

**6.** (1) A remedial notice may be varied or withdrawn by the Department in pursuance of an application to the Department —

- (a) which is made, at any time after the notice is issued, jointly by —
  - (i) a person or persons falling within subsection (2)(a), and
  - (ii) a person or persons falling within subsection (2)(b); or
- (b) which is made, at any time after the end of the compliance period, by a person or persons falling within subsection (2) on the grounds that there has been a material change in circumstances.

(2) The persons falling within this subsection are —

- (a) any person who is the complainant,
- (b) any person who is the owner or occupier of the neighbouring land, and
- (c) the Department of Agriculture, Fisheries and Forestry.



(3) Where the Department has made its decision on an application under subsection (1), it must as soon as is reasonably practicable —

- (a) notify each person falling within subsection (2) of the decision and its reasons for it; and
- (b) if the decision is to vary the notice, send each such person a copy of the notice as varied by it.

(4) Subject to the operation in relation to the notice of any provision made by or under subsection (6) or sections 7 to 9 —

- (a) if the decision is to vary the notice, the notice shall have effect as varied by the Department as from the date of the notification given by it under subsection (3); and
- (b) if the decision is to withdraw the notice, the notice shall cease to have effect as from that date.

(5) The withdrawal of a remedial notice does not prevent the Department issuing a further such notice in respect of the high hedge or high tree in question in connection with any subsequent complaint.

(6) The Department may by regulations make provision with respect to —

- (a) the procedure to be followed in connection with —
  - (i) applications under subsection (1), and
  - (ii) decisions of the Department on such applications; and
- (b) other matters consequent on or connected with such applications or decisions.

(7) Regulations under subsection (6) may in particular —

- (a) in connection with matters falling within paragraph (a) of that subsection, make provision corresponding or similar to any provision made by section 4;
- (b) make provision with respect to the operation or effect of a remedial notice in a case where an application for the variation of the notice is made under subsection (1)(a) before the end of the compliance period;

- (c) make provision for any decision made on an application by a person or persons under subsection (1) to be binding on other persons falling within subsection (2).

### *Appeals*

Appeal against remedial notice or decision of Department.

7. (1) Where the Department —
- (a) issues a remedial notice in accordance with section 5, or
  - (b) decides to vary or withdraw such a notice under section 6, or
  - (c) decides to refuse an application under section 6(1),
- any person falling within subsection (2) may appeal to the High Bailiff against the notice or decision.
- (2) The persons falling within this subsection are —
- (a) any person who is the complainant;
  - (b) any person who is the owner or occupier of the neighbouring land; and
  - (c) in the case of a tree, the Department of Agriculture, Fisheries and Forestry.
- (3) Where the Department makes a decision falling within section 4(6), the complainant may appeal to the High Bailiff against the decision.
- (4) An appeal under this section must be made before —
- (a) the end of the period of 28 days beginning with the relevant date, or
  - (b) such later time as the High Bailiff may in writing allow.
- (5) In subsection (4) “the relevant date” —
- (a) in the case of an appeal made in pursuance of subsection (1)(a), means the date on which the notice in question was issued; and
  - (b) in the case of any other appeal under this section, means the date of the notification given by the Department under section 4 or 6 in respect of the decision in question.

(6) Where an appeal is duly made in pursuance of subsection (1)(a) or (b), the notice or (as the case may be) the decision in question shall be of no effect pending the final determination or withdrawal of the appeal.

8. (1) The High Bailiff may on an appeal under section 7 allow or dismiss the appeal in whole or in part.

Determination  
or withdrawal  
of appeals.

(2) Where the High Bailiff decides to allow such an appeal to any extent, he may —

- (a) quash any remedial notice or decision to which the appeal relates,
- (b) vary such a notice, or
- (c) where such a notice has not been issued by the Department in respect of the complaint in question, issue any such notice in respect of it as could have been issued by the Department,

as he considers appropriate.

(3) For the purposes of this section —

- (a) section 4(4) shall apply in connection with any decision by the High Bailiff as to either of the issues specified in section 4(3) as it applies in connection with any decision of the Department under that subsection; and
- (b) in section 5 references to the Department shall (where the context permits) include a reference to the High Bailiff.

(4) Once the High Bailiff has made his decision on an appeal under section 7, he must as soon as is reasonably practicable —

- (a) give a notification of the decision, and
- (b) if the decision is to issue a remedial notice or to vary such a notice, send copies of the notice as issued or varied by him,

to every person falling within section 7(2) and to the Department.

(5) Where, in consequence of the High Bailiff's decision on an appeal, a remedial notice is upheld or varied, the operative date of the notice shall be —

- (a) the date of the High Bailiff's decision, or
- (b) such later date as he may specify in his decision.

(6) Where the person making an appeal under section 7 against a remedial notice withdraws his appeal, the operative date of the notice shall be the date on which the appeal is withdrawn.

(7) In any case falling within subsection (5) or (6), the compliance period for the notice shall accordingly run from the date which is its operative date by virtue of that subsection (and any period which may have started to run from a date preceding that on which the appeal was made shall accordingly be disregarded).

### *Powers of entry*

Powers of entry for the purposes of complaints and appeals.

**9.** (1) Where, under this Act, a complaint has been made or a remedial notice has been issued, a person authorised by the Department may enter the neighbouring land in order to obtain information required by the Department for the purpose of determining —

- (a) whether this Act applies to the complaint;
- (b) whether to issue or withdraw a remedial notice;
- (c) whether to vary a requirement of a remedial notice;
- (d) whether a requirement of a remedial notice has been complied with.

(2) Where an appeal has been made under section 7, a person authorised by the High Bailiff may enter the neighbouring land in order to obtain information required by the High Bailiff, for the purpose of determining an appeal under this Act.

(3) A person shall not enter land in the exercise of a power conferred by this section unless at least 24 hours' notice of the intended entry has been given to every occupier of the land.

(4) A person authorised under this section to enter land —

- (a) shall, if so required, produce evidence of his authority before entering; and
- (b) shall produce such evidence if required to do so at any time while he remains on the land.

(5) A person who enters land in the exercise of a power conferred by this section may —

- (a) take with him such other persons as may be necessary; and
- (b) take with him equipment and materials needed in order to obtain the information required.

(6) If, in the exercise of a power conferred by this section, a person enters land which is unoccupied or from which all of the persons occupying the land are temporarily absent, he must on his departure leave it as effectively secured against unauthorised entry as he found it.

(7) A person who intentionally obstructs a person acting in the exercise of the powers under this section is guilty of an offence and shall be liable, on summary conviction, to a fine not exceeding £5,000.

#### *Enforcement of remedial notices*

**10.** (1) Where, at any time after the end of the compliance period, any action required by a remedial notice to be taken has not been taken, any person who is then the owner or occupier of the neighbouring land shall be guilty of an offence and liable on summary conviction to a fine not exceeding £5,000. Offences.

(2) In proceedings against a person for an offence under subsection (1) it shall be a defence for him to show that he did everything he could be expected to do to secure compliance with the notice.

(3) Where a person charged with an offence under subsection (1) was not sent a copy of the remedial notice under any provision of this Act and either —

- (a) at the time of the offence he was the owner of the neighbouring land, or
- (b) he was not then the owner of that land,

it shall be a defence for him to show that he was not aware of the existence of the notice.

(4) Where a person is convicted of an offence under subsection (1) and it appears to the court that —

- (a) the failure to comply with the remedial notice is continuing, and
- (b) it is in that person's power to comply with it,

the court may, in addition to or instead of imposing any punishment, order him to take, within such reasonable period as may be fixed by the order, such steps as may be specified in the order for complying with the notice.

(5) Where a person fails without reasonable excuse to comply with an order under subsection (4) he shall be guilty of an offence and liable on summary conviction to a fine not exceeding £5,000.

Remedial  
action by  
Department  
etc.

**11.** (1) Where, at any time after the end of the compliance period, any action required by a remedial notice to be taken has not been taken —

- (a) a person authorised by the Department may enter the neighbouring land and take the required action; and
- (b) the Department may recover any expenses reasonably incurred by that person in doing so from any person who is the owner or an occupier of the land.

(2) Where any such expenses are recoverable from 2 or more persons, they shall be jointly and severally liable for those expenses.

(3) A person shall not enter land in the exercise of a power conferred by this section unless at least 7 days' notice of the intended entry has been given to every occupier of the land.

- (4) A person authorised under this section to enter land —
  - (a) shall, if so required, produce evidence of his authority before entering; and
  - (b) shall produce such evidence if required to do so at any time while he remains on the land.

(5) A person who enters land in the exercise of a power conferred by this section may —

- (a) use a vehicle to enter the land;
- (b) take with him such other persons as may be necessary;
- (c) take with him equipment and materials needed for the purpose of taking the required action.

(6) If, in the exercise of a power conferred by this section, a person enters land which is unoccupied or from which all of the persons occupying the land are temporarily absent, he must on

his departure leave it as effectively secured against unauthorised entry as he found it.

(7) If on a complaint made by the owner of any domestic property, it appears to the High Bailiff that the occupier of the domestic property prevents the owner from executing any work which the Department has required him to execute under this Act, the High Bailiff may order the occupier to permit the execution of the work.

(8) Any person who wilfully obstructs a person acting in the exercise of powers under this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding £5,000.

**12.** (1) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of —

Offences  
committed  
by bodies  
corporate.

- (a) any director, manager, secretary or other similar officer of the body corporate, or
- (b) any person who was purporting to act in any such capacity,

he, as well as the body corporate, shall be guilty of that offence and be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

### *Supplementary provisions*

**13.** (1) Before making any order or regulations under this Act the Department shall consult with the Department of Agriculture, Fisheries and Forestry.

Orders and  
regulations.

(2) Orders and regulations made by the Department under this Act shall not have effect unless approved by Tynwald.

(3) Any order or regulation under this Act may —

- (a) contain such consequential, incidental, supplementary or transitional provisions or savings (including provisions applying, with or without modifications, provisions made by or under other enactments) as the Department considers appropriate; and

(b) make different provisions for different cases.

Other documents.

**14.** (1) Any complaint, notice or notification authorised or required to be made, issued or given by virtue of this Act must be in writing.

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(2) Any notification or other document required to be given or sent to any person or the Department of Agriculture, Fisheries and Forestry by virtue of this Act shall be taken to be duly given or sent if served in accordance with section 41 of the Interpretation Act 1976.

Interpretation

**15.** In this Act —

“complaint” shall be construed in accordance with section 1(1) and (4);

“the complainant” has the meaning given by section 1(3);

“the compliance period” has the meaning given by section 5(6);

“the Department” has the meaning given by section 1(3);

“domestic property” has the meaning given by section 3(1);

“high hedge” has the meaning given by section 2(1);

“the neighbouring land” has the meaning given by section 1(3);

“occupier”, in relation to any land, means the person entitled to possession of the land by virtue of an estate or interest in it,

“the operative date” shall be construed in accordance with sections 5(5) and 8(5) and (6);

“owner”, in relation to any land, means a person (other than a mortgagee not in possession) who, whether in his own right or as trustee for any person —

(a) is entitled to receive the rack rent of the land, or

(b) where the land is not let at a rack rent, would be so entitled if it were so let;

“prescribed” means prescribed by regulations or orders made by the Department;



“remedial notice” shall be construed in accordance with section 5(1).

**16.** There shall be paid out of money provided by Tynwald — Financial provisions.

(a) any expenses incurred by the Department and the Department of Agriculture, Fisheries and Forestry in consequence of this Act;

(b) any increase attributable to this Act in sums payable out of money so provided by virtue of any other Act.

**17.** (1) This Act may be cited as the Trees and High Hedges Act 2005. Short title and commencement.

(2) This Act shall come into operation on such day as the Department may by order appoint and different days may be so appointed for different provisions and for different purposes.

